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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,023	10/28/2003	Michael J. Lehr	31356.30005	4272

26781 7590 03/14/2007  
BROUSE MCDOWELL LPA  
388 SOUTH MAIN STREET  
SUITE 500  
AKRON, OH 44311

EXAMINER
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CRABTREE, JOSHUA DAVID

ART UNIT	PAPER NUMBER
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3714

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/14/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/695,023

**Applicant(s)**

LEHR, MICHAEL J.

**Examiner**

Joshua D. Crabtree

**Art Unit**

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-7, and 9-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The following office action is in response to the amendment dated 1/15/2007. Claims 3 and 8 have been cancelled. Claims 1, 2, 4-7 and 9-11, and the newly added claims 12-20 are pending.

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 14, 16, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 14 and 16, a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not

required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 13 and 15 recite the broad recitation "at least one assumption", and the claims 14 and 16 also recite, "is multiple assumptions", which is the narrower statement of the range/limitation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 1, 12, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajer et al. (US 6,736,642) in view of Bro (US 5,722,418).**

Claim 1 is rejected under the same grounds as presented in the previous office action. With regard to the newly amended recitations wherein an associated instructor performs specific steps in the method, the invention of Bajer, as modified by Bro, may be used by any type of user, including an instructor or student, capable of using the invention. Additionally, since the asking and receiving of questions, in the invention of

Bajer, may be performed by the system, then the system itself would constitute an instructor.

With regard to claim 12, and the limitation wherein an associated instructor provides multiple assumptions, the assumptions chosen from the group comprising 1) emotions are more powerful... etc., Bajer discloses that a user may enter assumptions (Col. 2: 44-45). The assumptions entered by the user could be any assumption that a user could think of, including those recited in the claim. Additionally, the user of the invention may be any type of user capable of using the invention, including instructors, students, etc.

With regard to claim 17, and the limitation wherein the questions do not have demonstratively right or wrong answers, Bajer discloses that questions may be provided in order to collect evidence (Col. 2: 60-65). A question asked for the purpose of collecting evidence would not have a demonstratively right or wrong answer.

With regard to claim 19, and the limitation wherein the questions, answers, and comments occur in real time, Bajer discloses that the scenario may be presented in real-time to a user, and that a user may be automatically prompted to interact (Col. 2: 53-59), and that the user interface may be a dynamic, real-time interface (Col. 9: 17-26).

4. **Claims 2, 4-7, 9-11, 13-16, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajer et al. (US 6,736,642) in view of Bro (US 5,722,418), and further in view of Parry (US 6,077,085).**

Claims 2, 4-7, 9-11 are rejected under the same grounds as presented in the previous office action. With regard to the newly amended recitations wherein an associated instructor performs specific steps in the method, the invention of Bajer, as modified by Bro, may be used by any type of user, including an instructor or student, capable of using the invention, as previously described.

With regard to the newly amended recitation of interrelating the allegories based upon the answers and the comments during the relating of at least two of the three allegories (as in claims 2 and 7), and interrelating all of the allegories based upon the answers and comments during the relating of all of the categories (as in claims 4 and 9), the Validation scenario is related to the Awareness scenario since the assumptions made in the Awareness scenario are used in the Validation scenario. The user's interaction with the third scenario (Action scenario) is related to the first two scenarios, since the user must utilize the knowledge and experience gained from the first two scenarios during the third scenario. Therefore, the allegories, or scenarios, are interrelated based upon a user's interaction with the scenarios.

With regard to claims 13 and 15, and the limitation wherein the at least one assumption is chosen from the group comprising 1) emotions are more powerful... etc., Bajer discloses that a user may enter assumptions (Col. 2: 44-45). The assumptions entered by the user could be any assumption that a user could think of, including those recited in the claim. Additionally, the user of the invention may be any type of user capable of using the invention, including instructors, students, etc.

With regard to claims 14 and 16, and the limitation wherein the at least one assumption is multiple assumptions, Bajer discloses that a user may enter assumptions, as previously described (Col. 2: 44-45). Therefore, a plurality of assumptions may be entered.

With regard to claim 18, and the limitation wherein the questions are not analyzed for right or wrong answers, Bajer discloses that questions may be provided in order to collect evidence (Col. 2: 60-65).

With regard to claim 20, and the limitation wherein the questions, answers, and comments occur in real time, Bajer discloses that the scenario may be presented in real-time to a user, and that a user may be automatically prompted to interact (Col. 2: 53-59), and that the user interface may be a dynamic, real-time interface (Col. 9: 17-26).

### *Response to Arguments*

5. Applicant's arguments with regard to claims 1, 2, 4-7, and 9-11 have been fully considered but they are not persuasive.

Applicant has argued that the scenarios used in the invention of Bajer do not constitute allegories (pp. 13-16). The examiner respectfully disagrees. The specification has recited that an allegory may comprise a story, song, movie, diagram, *image*, picture, or the like (Paragraph [0029]). The scenarios of Bajer may be presented in the form of audio, prerecorded video, animation, graphic, or *images* (Col. 2: 53-67). Therefore, Bajer explicitly discloses that an *image* may be part of the stimuli presented to the user.

Additionally, the examiner asserts that a scenario, as taught by Bajer, is equivalent to a story.

Applicant has argued that the stages of the method of Bajer are not equivalent to the feature of choosing allegories based upon answers to the series of questions (p. 14). The examiner respectfully disagrees. The Validation step of the method of Bajer requires a user to validate assumptions made in the previous scenario. Therefore, the scenario presented in the Validation step will vary, based on how the user interacted during the first scenario (Awareness stage). Although the name of the stage might be the same (i.e., "Validation") each time the invention is used, the scenario itself may vary dynamically each time the invention is used, depending on how a specific user interacts during the Awareness stage.

Applicant has argued (p. 15) that Bajer does not show the feature of "interrelating the allegories based upon the answers". The examiner respectfully disagrees. The Validation scenario is related to the Awareness scenario since the assumptions made in the Awareness scenario are used in the Validation scenario. The user's interaction with the third scenario is related to the first two scenarios, since the user must utilize the knowledge and experience gained from the first two scenarios during the third scenario. Therefore, the allegories, or scenarios, are interrelated based upon a user's interaction (i.e., answers) provided.

Applicant has argued (p. 16) that the virtual coach used in Bajer teaches away from the applicant's specification. Applicant remarks that the virtual coach constitutes



an algorithm, and therefore constitutes a statistical, scientific method. The examiner respectfully disagrees. The virtual coach used in Bajer is used as a character, which interacts with a user. The examiner asserts that such a virtual character does not constitute a statistical scientific method, but rather acts as an interface component for the user of the invention.

Applicant has argued that newly added features in the claims are not shown in the prior art (pp. 17-18). The examiner remarks that these features are shown, as described in the office action above.

### *Conclusion*

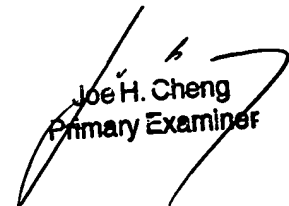
6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joshua D. Crabtree whose telephone number is 571-272-8962. The examiner can normally be reached on 8:00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Joe H. Cheng  
Primary Examiner

Joshua D. Crabtree  
March 8, 2007